

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 842 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA and

MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO of the judgement?
4. Whether this case involves a substantial question : NO of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

BHAVANI CONSTRUCTIONS

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Appearance:

GOVERNMENT PLEADER for Petitioners  
MR HARESH J TRIVEDI for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA and

MR.JUSTICE H.K.RATHOD

Date of decision: 13/01/2000

ORAL JUDGEMENT

This is an appeal against judgement and order dated 7.1.1989 of Civil Judge (S.D.), Mrizapur passed

under Section 20 of the Old Arbitration Act referring the dispute to an Arbitrator Shri R.G.Patel, Chief Engineer (Retired) 8, Sampat Rao Colony, opposite Circuit House, Vadodara for adjudication of the dispute between the parties in terms of Arbitration Clause 30 contained in the tender agreement within the time fixed by the Court. Shri K.C.Shah, Ld. AGP for the appellant and Shri G.T.Dayani for the respondents have been heard.

2. A limited point is involved for adjudication in this appeal regarding interpretation of Section 21 of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 which came into force w.e.f. 1.1.1994. Shri K.C.Shah, Learned Counsel for the appellant has argued that after enforcement of this Act and in view of Section 21 of the Act, the dispute has to be referred to the Tribunal and the Arbitrator who was appointed by the Lower Court has no authority and jurisdiction to enter upon the reference. He has also referred before us Section 2(K) of the Act and has argued that the dispute is covered in the definition of works contract.

3. Section 21 of the Act reads as under:

"21. Arbitration Act to cease to apply :- The provisions of the Arbitration Act, shall in so far as they are inconsistent with the provisions of this Act, cease to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute before an arbitrator, umpire, Court or authority shall stand transferred to the Tribunal."

4. It is thus clear from this Section that the provisions of the Arbitration Act shall in so far as they are inconsistent with the provisions of this Act cease to apply to any dispute arising from the works contract and all arbitration proceedings in relation to such dispute before an Arbitrator, empire, court or Authority shall stand transferred to the Tribunal.

5. Learned Counsel for the respondents had frankly conceded that after enforcement of this Act and statuoy remedy available under this Act, the dispute cannot be adjudicated upon by the Arbitrator appointed by the Court under Section 20 of the Old Arbitration Act. Shri Shah has also pointed out that the reference to dispute could not materialise because of interim stay order granted by this Court in this First Appeal on 31.8.1989. The effect of this stay order would be that actually the dispute

referred in the form of plaint is still with the court i.e. the Civil Judge (S.D.) Mirzapur and despite final disposal of the application under Section 20 of the Arbitration Act, it cannot be said that the matter is pending before the Arbitrator. Learned Counsel for the respondents further informs that the arbitrator so appointed by the Lower Court has expired. In view of these events, it can safely be said that the disputes which were referred under Section 20 of the Arbitration Act are still pending before the Court and the same have to be transferred to the Tribunal and not this First Appeal. For all the purposes, this First Appeal has become infructuous after the enforcement of the Act. As such the following order is passed:-

ORDER

The appeal is dismissed as infructuous. The disputes referred in Special Civil Suit No. 303 of 1988 filed in the Court of Civil Judge (S.D.) at Mirzapur alongwith written statement and all other papers of the aforesaid proceeding shall stand transferred to Gujarat Public Works Contracts Disputes Arbitration Tribunal which shall proceed to hear and decide the disputes in accordance with law and the procedure contained in the Act. No order as to costs.

(D.C.Srivastava, J)

(H.K.Rathod, J)

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